Supreme Court, U.S.
FILED
AUG 23 1999
OFFICE OF THE CLERK

No. 99-19

IN THE

Supreme Court of the United States

RICHARD WAINSCOTT,

Petitioner,

v.

MEDUSA AGGREGATES COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether an individual with a back impairment which limits his ability to lift but is still capable a performing numerous jobs in the regional economy was properly determined not to be "disabled" as defined by the Americans with Disabilities Act?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Medusa Aggregates Co., was merged into Southdown, Inc. Southdown, Inc. has no parent corporation and no publicly held company owns 10% or more of its stock.

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The Respondent requests that this Court deny the Petition for Writ of Certiorari seeking review of the decision and judgment of the United States Court of Appeals for the Sixth Circuit entered on April 1, 1999. The Sixth Circuit affirmed an earlier judgment of the United States District Court for the Eastern District of Kentucky granting Respondent's Motion for Summary Judgment on all of Petitioner's claims under the Americans with Disabilities Act (ADA).

STATEMENT OF THE CASE

A. Procedural Posture

In 1996, Petitioner, Richard Wainscott ("Petitioner" or "Wainscott"), filed suit against his former employer Respondent, Medusa Aggregates Co. ("Respondent" or "Medusa Aggregates") in the United States District Court for the Eastern District of Kentucky. Petitioner alleged that his termination of employment from Respondent violated the ADA, 42 U.S.C. §§ 12101, *et seq.* Petitioner also brought pendant state law claims alleging his discharge violated Kentucky's anti-discrimination statute, Kentucky Revised Statutes Chapter 344. His complaint also contained a Kentucky common law claim of intentional infliction of emotional distress.

Respondent subsequently filed a Motion for Summary Judgment on all of Petitioner's claims, which the trial court granted in its entirety because it concluded that Petitioner was not "disabled" as defined by the ADA. Petitioner appealed the trial court's decision to the United States Court of Appeals for the Sixth Circuit. In an unpublished decision, the Sixth Circuit affirmed the trial court's decision and held that Petitioner is not disabled under the ADA.

B. Statement of Facts

Wainscott was hired by Respondent in 1979 at its Butler, Kentucky limestone quarry and shortly thereafter assigned to work as a haul unit operator. At this quarry, limestone boulders are stripped from the quarry walls and loaded into heavy trucks known as "haul units." These trucks, driven by haul unit operators, haul the boulders to one of numerous "plants" on the property. Due to the irregular surfaces throughout the quarry complex, including the steep unpaved roads in and out of the quarry pits, the ride is often bumpy. Once the boulders are hauled to a plant, they are unloaded onto conveyor belts that move them to crushers within the plant. The crushers then break the rock into various smaller sizes, depending on customer demand. The end product is placed into hoppers for shipping to Respondent's customers.

The quarry also employs laborers. In contrast to haul unit operators, laborers perform a variety of physically-intensive tasks such as: hauling long water hoses and heavy water pumps from one part of the quarry to another (although carrying water pumps is usually done with the assistance of lifting devices); shoveling out mud, gravel, and other debris from under conveyor belts and truck scales; using high pressure hoses to wash away rocks, mud, and debris from conveyor belts; changing thirty to one hundred pound screens that sift larger rock from smaller rock during the crusher process; transporting these screens up and down staircases and over catwalks; performing general maintenance work which frequently requires moving objects in excess of fifty (50) pounds; and occasionally performing tasks such as painting the interior of buildings, cutting grass, and trimming weeds.

In 1995, Petitioner was working exclusively as a haul unit operator when he brought to work a written statement from his personal physician which said that Petitioner could not perform any work for Respondent for at least five days and that Petitioner could not drive a truck anymore. Five days later, Respondent requested an updated medical report from Petitioner's personal physician. This included a series of questions inquiring into Petitioner's condition and what limitations were being placed upon Petitioner. Petitioner's physician responded in writing that in his expert opinion, Petitioner should not: (1) drive a haul unit truck due to the effect the bouncing from the bumpy ride had on his back; (2) lift over fifty (50) pounds; or (3) engage in repetitive bending. These restrictions were permanent. Based upon these restrictions, Respondent determined there were no jobs available that Petitioner could perform.

Later, in response to Petitioner's request that he be considered for employment as a laborer, Respondent asked Petitioner to have his doctor opine, in light of his previous physical restrictions, whether Petitioner could perform the essential functions of a laborer. In order to help his doctor make this determination, Respondent provided a list of the various functions of the laborer's position. Shortly thereafter, the doctor opined that Petitioner was able to perform virtually all of the listed functions of a laborer except moving water pumps. Because this was inconsistent with the doctor's previous lifting and bending restrictions, Respondent sent a revised list of job functions with physical requirement descriptions to Petitioner's physician for his review.

In response, Petitioner's doctor stated that Petitioner could not, as a result of his physical limitations, move water pumps, move water hoses, change screens in excess of fifty

pounds, sweep and clean up the inside of buildings or clean under truck scales. The doctor also wrote on the bottom of the list "No lifting over fifty pounds." Based upon Petitioner's doctor's opinion that Petitioner could not perform numerous essential job functions of the laborer position, Respondent could not accommodate Petitioner's request to return to work as a laborer.

After he filed his lawsuit, Petitioner was examined by a vocational rehabilitation expert who Petitioner designated as an expert witness in this case. Petitioner's expert testified that at that time there were approximately 757,000 jobs in the Greater Cincinnati regional economy,[1] of which one hundred eleven thousand three hundred and sixty-six (111,366) called for manual skills. Taking Petitioner's work restrictions into account, Petitioner's expert concluded that he was precluded from only approximately eighteen thousand (18,000) of these jobs. Thus, even under the test conducted by Petitioner's own expert, there were approximately ninety-three thousand (93,000) jobs available in the regional economy from which Petitioner was not substantially limited.

Additionally, Petitioner was examined by Respondent's vocational rehabilitation expert. Respondent's expert testified that Petitioner could perform thousands of jobs in the Greater Cincinnati regional economy, including such work as stock worker, order filler, watch guard, food service worker, janitor, maintenance worker, basic automobile service, production machine operator tender, hand worker/assembler, light vehicle operation, service station attendant, and miscellaneous helpers and laborers. Thus, like Petitioner's expert, he concluded that Petitioner was not substantially limited from the major life activity of working.

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1. Which includes Butler, Kentucky, site of Respondent's facility at which Petitioner was formerly employed.

These expert conclusions were further bolstered by Petitioner's actual life experiences. The Record revealed that despite Petitioner's limitations, he continued, after he left Respondent's employment, to raise and harvest tobacco and continued to perform work on tractor, car, lawn mower, and boat engines.

REASONS FOR DENYING THE WRIT

1.

THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE THE ISSUES RAISED BY PETITIONER ARE NOT APPROPRIATE FOR REVIEW BY THIS COURT.

Petitioner has simply not raised an issue appropriate for review by this Court. Petitioner sets forth four arguments in support of his Petition for Writ of Certiorari, but devotes the majority of his Petition to his first two arguments.

Petitioner first argues that the lower courts' decisions are contrary to the EEOC's Technical Assistance Manual. However, this Court recently considered these regulations and held that they lack any precedential value. Second, Petitioner argues that the lower courts' decisions are in conflict with decisions from other federal circuit courts. However, the alleged conflict does not exist. The lower courts' decisions are in harmony with the legal standard recognized by this Court and other federal circuit courts. Accordingly, the request for the writ of certiorari should be denied.

Finally, Petitioner argues that the decisions below are in conflict with cases decided under the Rehabilitation Act as well as with Congressional intent. However, no such conflict exists.

A. Petitioner's claim that the lower courts' decisions were contrary to the EEOC's interpretation of the ADA does not create a basis for granting his Petition for Writ of Certiorari.

Petitioner first argues that the decisions of the lower courts are inconsistent with guidelines promulgated by the EEOC. Because his back impairment precludes him from "heavy lifting," Petitioner claims the EEOC regulations and Technical Assistance Manual mandate that he should be considered "disabled" as defined by the ADA.

The ADA provides that no covered entity shall discriminate against a qualified individual with a disability. 42 U.S.C. § 12112(a). A "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(a). Further, a "disability" is defined as:

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> (B) a record of such an impairment; or
>
> (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2).

The ADA does not define "substantially limited." However, the EEOC has defined the term to mean:

> (i) Unable to perform a major life activity that the average person in the general population can perform; or
>
> (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

29 C.F.R. § 1630.2(j)(1).

The district court and the court of appeals both relied upon these legal standards in determining that Petitioner is not disabled under the ADA. Each court looked at the extensive expert testimony — both Petitioner's and Respondent's — regarding the number of available jobs in the Greater Cincinnati area that Petitioner was capable of performing and determined that Petitioner was not substantially limited from the major life activity of working. Additionally, each court relied upon Petitioner's admission that he performed tasks such as auto repair and tobacco harvesting in support of this conclusion.

Nevertheless, Petitioner claims the lower court's decisions were erroneous in light of language contained in the EEOC's Technical Assistance Manual. Specifically, Petitioner relies upon a portion of the Technical Assistance Manual which provides, "a charging party is substantially

limited in working if (s)he has a back impairment that precludes him/her from heavy lifting labor jobs." (Petition for Writ of Certiorari at p. 11).[2]

While agency regulations such as the EEOC's are entitled to some consideration, they are not authoritative. "Although an agency's interpretation of a statute under which it operates is entitled to some deference, 'this deference is constrained by our obligation to honor the clear meaning of a statute, as revealed by its language, purpose, and history.' " *Southeastern Comm. College v. Davis*, 442 U.S. 397, 411 (1979) (quoting, *Teamsters v. Daniel*, 439 U.S. 551, 556 n.20 (1979)). Furthermore, the Technical Assistance Manual is entitled to even less deference. *General Electric Co. v. Gilbert*, 429 U.S. 125, 141 (1976) ("Courts properly may accord less weight to such guidance than to administrative regulations which Congress has declared have the force of law.").

In fact, this Court recently disregarded the EEOC regulations regarding the definition of disabled under the ADA, finding that the EEOC's interpretation was improper. *Sutton v. United Air Lines, Inc.*, __ U.S. __, 119 S. Ct. 2139, 2146 (1999). ("[R]espondent is correct that the approach adopted by the agency guidelines — that persons are to be evaluated in their hypothetical uncorrected state — is an impermissible interpretation of the ADA"). Moreover, while this Court recognized that Congress had given authority to the EEOC to issue regulations to carry out the employment provisions of Title I of the ADA, the EEOC had not been

2. From his Petition, while it is unclear as to what portion of the Technical Assistance Manual he is citing, it appears he is citing to The Technical Assistance Manual, Volume II, prepared by the EEOC, EOC Order 915.002, issued on March 14, 1995.

delegated the authority to interpret the term "disability." *Id.* ("Most notably, no agency has been delegated the authority to interpret the term 'disability.' [42 U.S.C.] § 12102(2).").

Thus, for the same reason that this Court declined to follow the EEOC regulations at issue in *Sutton*, this Court must refuse Petitioner's invitation that it do so here. Both the Sixth Circuit Court of Appeals and the trial court applied the correct legal standard in determining that Petitioner was not substantially limited from the major life activity of working. Both lower courts concluded that Petitioner's impairment limited him only from a narrow range of jobs and did not substantially limit him in the major life activity of working. While Petitioner argues that these decisions are at variance with a portion of the EEOC's Technical Assistance Manual, which the courts had no obligation to follow, such alleged inconsistency is inconsequential and certainly does not create a compelling issue that must be reviewed by this Court.

Furthermore, Petitioner's argument is also at odds with this Court's holding in *Sutton* that ADA cases require an individualized assessment of the plaintiff's impairment. 119 S. Ct. at 2147 (citing 42 U.S.C. § 12102(2); *Bragdon v. Abbott*, 524 U.S. 624, __ (1998)). Thus, Petitioner's argument that an individual's preclusion from "heavy lifting" automatically renders that individual as disabled is counter to this Court's requirement that each ADA case be decided upon a particular assessment of the limitations of the individual plaintiff.

In contrast, here the lower courts focused on how Petitioner was impacted by his impairments. Expert testimony revealed that, despite Petitioner's back

impairment, there were close to a hundred thousand jobs available in the regional economy that Petitioner could perform. The lower courts also focused on Petitioner's ability to perform tasks such as auto repair and tobacco harvesting. After conducting this individualized analysis, the lower courts correctly concluded that Petitioner was not disabled as defined by the ADA because he was not substantially limited from the major life activity of working. Accordingly, Petitioner's request for a writ of certiorari should be denied.

B. The lower courts decisions are not inconsistent with ADA cases from other circuits.

Petitioner next argues that a writ of certiorari is warranted because the lower courts' holdings are inconsistent with decisions from other federal circuits. This argument is without merit. Countless federal appellate and trial courts have consistently held that an individual is not disabled under the ADA because he or she is not substantially limited in the major life activity of working. Furthermore, the lower courts applied the same legal standard which has been recognized by all federal appellate districts and cited with approval by this Court.

A "qualified individual with a disability" must be substantially limited in one or more major life activities. Cited with favor by this Court, the EEOC defines "substantially limited" as "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities." 29 C.F.R. § 1630(j)(3)(i) (1998) (quoted in *Murphy v. United Parcel Service*, 119 S. Ct. 2133, 2138 (1999)). "[W]hen determining whether an individual is substantially limited in the major

life activity of working, [courts should consider] 'the number and types of jobs utilizing similar training, knowledge, skills or abilities, within [the] geographical area [reasonably accessible to the individual], from which the individual is also disqualified.' " *Murphy*, 119 S. Ct. at 2138 (*citing* § 1630(j)(ii)(B)). In sum, an " 'inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.' " *Id.* (quoting 29 C.F.R. § 1630(j)(3)(i)).

The courts below utilized the same standard as employed in *Murphy*. Both the trial court and appellate court concluded that Petitioner was not substantially limited from the major life activity of working because he was not precluded from a class of jobs or broad range of jobs, but only from a narrow range of jobs which would require him to lift in excess of fifty (50) pounds. These conclusions are well-supported by the Record. Both Petitioner's and Respondent's experts testified that there are tens of thousands of jobs available in the regional economy for Petitioner despite his impairments. Furthermore, Petitioner's actual life experiences, which include continued tobacco harvesting and engine repair despite his back impairment, demonstrates he is not substantially limited from the major life activity of working.

Applying the appropriate legal standard to these facts, the courts below correctly recognized that Petitioner was not substantially limited from the major life activity of working. The decisions are supported by overwhelming judicial precedent from the Sixth Circuit and the other federal circuit courts. *See, e.g.*, *McKay v. Toyota Motor Mfg. Co., USA Inc.*, 110 F.3d 369 (6th Cir. 1997); *Penny v. United Parcel Service, Inc.*, 128 F.3d 408 (6th Cir. 1997) (plaintiff with back impairment was not substantially limited from the major life

activity of working); *Young v. U.S. West Communications, Inc.*, 1998 U.S. App. LEXIS 31000 (10th Cir., December 9, 1998) (plaintiff's repetitive motion and lifting restrictions did not substantially impair her from the major life activity of working); *Gutridge v. Clure*, 153 F.3d 898 (8th Cir. 1998) (plaintiff was not disabled under the ADA because his lifting restrictions limited him only from a narrow range of jobs rather than a class or broad range of jobs); *Pryor v. Trane Co.*, 138 F.3d 1024 (5th Cir. 1998) (plaintiff was not substantially limited from the major life activity of working because of her lifting restrictions); *Wooten v. Farmland Foods*, 58 F.3d 382, 386 (8th Cir. 1995); *Snow v. Ridgeview Medical Center*, 128 F.3d 1201 (8th Cir. 1997); *Williams v. Channel Master Satellite Systems, Inc.*, 101 F.3d 346 (4th Cir. 1996); *Burgard v. SuperValu Holdings, Inc.*, 1997 U.S. App. LEXIS 12228 (10th Cir., May 27, 1997); *Sherrod v. American Airlines, Inc.*, 1998 U.S. App. LEXIS 1053 (5th Cir., January 27, 1998) (holding that plaintiff's back injury did not substantially limit him from the major life activity of working); *Aucutt v. Six Flags Over Mid America, Inc.*, 85 F.3d 1311 (8th Cir. 1996) (plaintiff's lifting restriction did not qualify him as disabled under the ADA).

The handful of decisions cited by Petitioner are not inconsistent with this large body of case law. Each of the cases relied upon by Petitioner have utilized the same legal standard of whether the individual's impairment substantially limited him or her from a class of jobs or broad range of jobs. *See, e.g.*, *Cochrum v. Old Ben Coal Co.*, 102 F.3d 908, 911 (7th Cir. 1996) ("An individual is substantially limited in working if the individual is significantly restricted in the ability to perform a class of jobs or a broad range of jobs in

various classes."); *Mondzelewski v. Pathmark Stores, Inc.*, 162 F.3d 778, 784 (3rd Cir. 1998) (holding an individual is substantially limited from working if he is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities."). This standard is identical to the one employed by the courts below, all of the decisions cited above, and this Court in *Murphy*. Any difference which Petitioner perceives from those cases as compared to the case at bar are based upon factual differences, not an inconsistent application of a legal standard.

Furthermore, the cases relied upon by Petitioner in support of his alleged "conflict" are readily distinguishable. For instance, the holding in *Cochrum* is not in conflict with the lower courts' decisions. The *Cochrum* court held that the employer was entitled to judgment as a matter of law because the plaintiff could not demonstrate that he could perform the essential functions of his job with or without reasonable accommodation. 102 F.3d at 909. Thus, the portions of the decision relied upon by Petitioner are mere *dicta*. *Id.* Even if it was not *dicta*, the *Cochrum* case would still be distinguishable from the case at bar. In *Cochrum*, the decision was simply devoid of any testimony from expert or lay witnesses regarding the impact of his impairments. Thus, the court stated that because the plaintiff's impairments "might" substantially limit him from a broad range of jobs, the trial court should not have "assumed" that the back impairment did not substantially limit the plaintiff from working. *Id.* at 911. However, unlike *Cochrum*, the lower courts in this case did not make any assumptions about the extent of Petitioner's limitations. Rather, the lower courts in this case took into account expert testimony detailing the number of jobs available to Petitioner and testimony describing Petitioner's real world experiences.

Similarly, Petitioner's reliance upon *Mondzelewski* is also misplaced. In that case, the Third Circuit reversed the trial court's entry of summary judgment in favor of the employer because the trial court failed to conduct an individualized analysis of the plaintiff's impairment by ignoring the individual's training, skills, and abilities. 162 F.3d at 783. However, in this case the lower courts did conduct such an individualized analysis. An examination of Petitioner's abilities reveals that he continues to harvest tobacco and repair engines despite his back impairment. There was no evidence of the plaintiff in *Mondzelewski* having similar abilities. Accordingly, the lower courts' decisions are not inconsistent with the Third Circuit's holding in *Mondzelewski*.

Thus, Petitioner's argument that the lower courts' decisions are contrary to decisions from other federal circuits is without merit. The lower courts applied a well-established standard that has been cited favorably by this Court and is consistent with numerous decisions from the other federal circuits. Accordingly, this Court should deny Petitioner's request for a writ of certiorari.

C. The lower courts' decisions are not in conflict with cases decided under the Rehabilitation Act.

Petitioner also argues that the lower courts' decisions were erroneous because they were inconsistent with judicial opinions rendered under the Rehabilitation Act. Initially, cases decided under the Rehabilitation Act are not binding in cases brought under the ADA. *Emrick v. Libbey-Owens-Ford Co.*, 875 F. Supp. 393, 395-96 (E.D. Tex. 1995) (citing *Vande Zande v. State of Wis. Dep't of Admin.*, 851 F. Supp. 353, 359 (W.D. Wis. 1994); *Harmer v. Virginia Elec. and*

Power Co., 831 F. Supp. 1300 (E.D. Va. 1993)). Rather, Rehabilitation Act cases merely provide guidance for courts to follow in ADA cases. *Id.*; *see also Ford v. Schering-Plough Corp.*, 145 F.3d 601, 608 (3rd Cir. 1998). While Rehabilitation Act cases provided valuable guidance during the ADA's infancy, the ADA has now produced its own well-established body of precedent.

Nevertheless, the lower courts' decisions in this case are not at odds with the legal standard established by the Rehabilitation Act. In support of his argument, Petitioner points to a smattering of outdated district court decisions. Numerous cases decided under the Rehabilitation Act have concluded that individuals with limitations such as Petitioner's are not substantially limited from the major life activity of working. *See, e.g.*, *Heilweil v. Mount Sinai Hospital*, 32 F.3d 718 (2nd Cir. 1994); *Gumpton v. Virginia*, 14 F.3d 203, 205 (4th Cir.), *cert. denied*, 513 U.S. 810, 130 L. Ed. 2d 17, 115 S. Ct. 59 (1994); *Byrne v. Board of Educ.*, 979 F.2d 560, 565 (7th Cir. 1992); *Welsh v. City of Tulsa*, 977 F.2d 1415, 1417-18 (10th Cir. 1992); *Maulding v. Sullivan*, 961 F.2d 694, 698 (8th Cir. 1992), *cert. denied*, 507 U.S. 910 (1993); *Cook v. Rhode Island*, 10 F.3d 17, 25 (1st Cir. 1993); *Forrisi v. Bowen*, 794 F.2d 931, 935 (4th Cir. 1986). Each of these cases held that a plaintiff was not entitled to pursue his or her claim under the Rehabilitation Act because his or her impairment did not substantially limit him or her from a major life activity such as working. Thus, the lower courts' decisions are not inconsistent with case law developed under the Rehabilitation Act.

D. The lower courts' decisions are not inconsistent with the legislative history behind the ADA.

Finally, Petitioner argues this Court should review the lower courts decisions because they are inconsistent with the legislative intent behind the ADA. Because the lower courts decisions are consistent with the legislative purpose behind the ADA, Petitioner's argument is without merit.

Petitioner contends that because the ADA was intended to apply to more than just "traditional" disabilities such as blindness or deafness, the lower courts erred by concluding Petitioner is not disabled. Neither the trial court nor the appellate court below has ever suggested such a narrow interpretation of the ADA. In fact, neither court suggested that a back impairment could never be a disability. Rather, both courts merely concluded, after conducting a particularized inquiry, that because Petitioner's impairment did not substantially limit him from any major life activity, he did not have a viable ADA claim.

Recently, this Court discussed Congressional intent as it relates to the definition of disabled under the ADA. *Sutton*, 119 S. Ct. at 2147-49. This Court stated that Congress intended for the ADA to apply to approximately forty-three million (43,000,000) Americans. *Id.* at 2147. This Court made it clear that this number indicates it was not Congress' intention to protect all individuals who suffer from some form of an impairment. If that was the intent behind the statute, this Court recognized that the number of protected Americans would be significantly higher than the 43 million Americans currently protected under the Act.

For example, this Court noted that at the time the ADA was passed there were 31.4 million Americans alone who suffered from "chronic activity limitation status." *Id.* at 2148. Furthermore, this Court recognized that there are approximately twenty-eight million (28,000,000) Americans suffering from hearing impairments, fifty million (50,000,000) Americans suffering from high blood pressure, and one hundred million (100,000,000) Americans suffering from impaired vision. *Id.* This Court recognized that obviously the Act was not intended to provide protection for all of these individuals.

The same reasoning applies with equal force in this case. Congress simply did not intend for the ADA to provide protection to every individual suffering from an impairment such as a bad back. Rather, Congress intended for the Act only to apply to those individuals whose impairments substantially limited their ability to perform a major life activity. The Record in this case is replete with evidence that Petitioner is not substantially limited from the major life activity of working. The lower courts recognized this to be true. Thus, the lower courts' decisions were consistent with the clear legislative purpose behind the ADA.

CONCLUSION

Petitioner's request for a Writ of Certiorari should be denied. Petitioner has failed to point to a legitimate basis for granting his requested writ. Both of the courts below applied the facts of this case to the correct legal standard and appropriately concluded that Petitioner's claims must fail as a matter of law. Accordingly, for the foregoing reasons, Respondent respectfully request this Court deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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